

EXHIBIT J

Deposition of J. Bradley Sargent

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06/09/2020

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
4

5 RADIANT GLOBAL LOGISTICS, INC.,
6 a Washington corporation,
7 Plaintiff,

8 -vs-

Case No. 2:18-12783-PDB-RSW

9 CHARLES FURSTENAU, JR., an Hon. Paul D. Borman
10 individual and Michigan Mag. Judge R. Steven Whalen
11 resident, and BTX AIR EXPRESS
12 OF DETROIT, LLC, a Connecticut
13 limited liability company,
14 Defendants.

15 ~~~~~/

16 DEPONENT: DEPOSITION OF JOHN BRADLEY SARGENT, CPA/CFF
17 APPEARING REMOTELY FROM WILL COUNTY,
18 ILLINOIS

19 DATE: Tuesday, June 9, 2020

20 TIME: 9:34 a.m.

21 REPORTER: John J. Slatin, RPR, CSR-5180,
22 Certified Shorthand Reporter,
23 Appearing Remotely From
24 Oakland County, Michigan
25 (Appearances listed on page 2)

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1 REMOTE APPEARANCES:

2

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20

21 (Appearances continued on page 3)

22

23

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25

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1 REMOTE APPEARANCES CONTINUED:

2

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10	EXHIBITS:		IDENTIFIED
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12	(Exhibits provided electronically		
13	to the reporter)		
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15	Exhibit 1	Expert Report of	98
16		J. Bradley Sargent,	
17		CPA/CFF, CFE, CFS, CCA,	
18		FABFA, December 16, 2019	
19			
20			
21			
22			
23			
24			
25			

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1 Tuesday, June 9, 2020
2 Reported Remotely from
3 Oakland County, Michigan
4 9:34 a.m.

5 * * *

6 THE REPORTER: The attorneys participating in this
7 deposition acknowledge that I am not physically present
8 in the deposition room and that I will be reporting this
9 deposition remotely. They further acknowledge that, in
10 lieu of an oath administered in person, the witness will
11 verbally declare his testimony in this matter is under
12 penalty of perjury. The parties and their counsel
13 consent to this arrangement and waive any objections to
14 this manner of reporting.

15 Will legal counsel please indicate your agreement
16 by stating your name, party represented and your
17 agreement on the record.

18 MR. JEFFERS: This is Ben Jeffers. I represent the
19 Plaintiff, Radiant, and I agree.

20 MR. MARQUIS: I am Andy Marquis, counsel for
21 Defendant BTX Air Express of Detroit, and I agree to the
22 process today.

23 MR. KOBILJAK: Kurt Kobiljak on behalf of Chad
24 Furstenau individually, and I agree.

25 THE REPORTER: Thank you.

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1 At this point will the witness kindly present his
2 government-issued identification by holding it up to the
3 camera for verification.

4 THE WITNESS: (Complying.)

5 THE REPORTER: Just a little tighter.

6 THE WITNESS: (Complying.)

7 THE REPORTER: Yeah. Great. Okay. Thank you very
8 much, Mr. Sargent. I appreciate that.

9 If you will raise your right hand, I'll swear you
10 in. I just need a "yes" or a "no."

11 THE WITNESS: (Complying.)

12 THE REPORTER: Do you solemnly swear the testimony
13 you're about to give will be the truth, the whole truth
14 and nothing but the truth, so help you God?

15 THE WITNESS: Yes.

16 THE REPORTER: Great. Thank you.

17 * * *

18 JOHN BRADLEY SARGENT, CPA/CFF

19 having been first duly sworn, was examined and testified
20 as follows:

21 EXAMINATION

22 BY MR. MARQUIS:

23 Q. All right. Good morning, Mr. Sargent.

24 A. Good morning.

25 Q. We're all in new territory here as we endeavor to

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1 conduct a video deposition.

2 Have you ever had one of these done by video?

3 A. No, I have not.

4 Q. Well, I've done some by video but never by Zoom. So,
5 it's my first time as well. So, we'll -- we're going to
6 give it a shot, and there's probably going to be some
7 additional kinks here that we don't always have in
8 regular depositions but I think we can work through it.

9 And I think if -- a lot of the same rules apply.

10 If you need a break, you'll let us know?

11 A. Yes. Absolutely.

12 Q. Okay. And if you don't understand a question, it's the
13 same here as it would be if we were all in person. Feel
14 free to ask for clarification. I'm not looking for you
15 to guess or speculate. Just give us the answer if you
16 understand the question.

17 My questions aren't perfect, so I'll reform them
18 whenever you need me to; okay?

19 A. Yes.

20 Q. And some of what I'm saying right now is an assumption
21 that you have had a number of depositions taken of you
22 in the past.

23 Correct?

24 A. That's correct.

25 Q. Okay. So, I'm laying out a couple ground rules, but I'm

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1 not going through the whole, you know, kit and caboodle
2 because I think you kind of know how this works; right?

3 A. That's correct.

4 Q. Okay. And if -- oh, I guess I'll just do this reminder.

5 We need verbal answers. I mean, I think you know
6 that, but I think it's at a premium here that we make
7 sure we have verbal answers even more because we're kind
8 of still fitting in some of the communication we're
9 doing; fair?

10 A. Yes.

11 Q. Okay. So, just start, please, by stating and spelling
12 your name for the record.

13 A. Certainly.

14 John, J-o-h-n, Bradley, B-r-a-d-l-e-y, Sargent,
15 S-a-r-g-e-n-t.

16 Q. Okay. Thank you.

17 And where are you employed currently?

18 A. I am the managing member of the Sargent Consulting
19 Group.

20 Q. And what's your title there?

21 A. Managing member.

22 Q. Okay. Is that the only title you have?

23 A. Yes.

24 Q. Okay. And are you more generally -- is your job an
25 accountant, or is there a better way to identify that?

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1 A. Well, I'm a forensic accountant.

2 Q. And what's the -- what is your definition of a forensic
3 accountant?

4 A. Typically it's an individual with accounting skills and
5 knowledge that applies those skills and knowledge in
6 various venues, primarily in litigation or
7 pre-litigation context.

8 Q. Was there a period of time where you transitioned to
9 becoming a forensic accountant versus a more traditional
10 accountant?

11 A. Yes. Certainly, yeah. I started as a traditional
12 accountant, yes.

13 Q. How long were you kind of in that more traditional
14 accounting role?

15 A. Actually, very briefly. Less than a year.

16 Q. And at that point, after that less than a year, that's
17 when you started doing exclusively forensic accounting?

18 A. Yes. Yes. Litigation support work, yes.

19 Q. And about how many years ago was that that you started
20 doing the forensic accounting more exclusively?

21 A. Twenty-one years ago.

22 Q. And then within those 21 years, obviously at some point
23 you formed the consulting group that you run now.

24 When was that?

25 A. In February 2009.

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1 Q. And what led you to forming that group, transitioning
2 over to running your own shop?

3 A. Well, it was always a dream of mine absolutely to run my
4 own business.

5 Q. And are there -- you said you're a managing member.
6 Are there any other managing members as well?

7 A. No. I'm the sole member.

8 Q. Okay. And I understand that today you're physically
9 located in the Chicago area; right?

10 A. Yes. That's correct.

11 Q. But you've got -- your firm has offices in other cities?

12 A. Yes. We are in downtown Detroit and in downtown Denver.

13 Q. And those are -- are those physical presences with
14 employees?

15 A. The Detroit office is not. It's a physical presence.
16 It's a live/work unit right in downtown.

17 The Denver unit is an office with physical
18 employees, yes.

19 Q. Okay. So, and you mentioned this forensic accounting
20 work is related to litigation matters.

21 Is that across the board, all of them are either
22 active litigation or potential litigation?

23 A. Not all across the board.

24 I started my career predominantly doing fraud
25 investigations, and many, many of those never reach a

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1 litigation stage for multiple reasons.

2 Q. Sure.

3 Do you still do any of that fraud examination work
4 today?

5 A. Absolutely.

6 Q. Do you have an idea of the split that you have currently
7 between fraud investigation and more like a lost profits
8 analysis that we have in this case?

9 A. Well, if I even backed up and said economic damages on a
10 bigger picture from lost profits, it -- it varies from
11 year to year. Some years it can be 50/50; some years --
12 it would tend to be more in the economic damages area
13 than it would be in the investigative are.

14 Q. And --

15 A. Though there's certainly a lot of overlap and skill sets
16 on both sides.

17 Q. Okay. Did you -- have you sort of transitioned a little
18 bit over the years with increasing your emphasis on the
19 economic damages portion of your work versus the fraud
20 examination?

21 A. Yes. That's an accurate assessment, yes.

22 Q. Okay. But even today could be -- I'm not committing you
23 to this for today's purposes, but today it could be that
24 you're 50/50 or somewhere around that between fraud and
25 economic damages?

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1 A. Yes.

2 But, again, to clarify, there's certain -- I -- you
3 can be working on a case that is in litigation that is
4 an extensive and exhaustive fraud investigation that
5 will need damages quantified based on anything that's
6 found.

7 So, they are -- are not mutually exclusive.

8 Q. Okay. Have you done economic damages analysis or
9 reports for Radiant prior to this case?

10 A. No, sir.

11 Q. Did you say "No, sir"?

12 A. No, sir. No.

13 Q. Okay. Sorry. I just wanted to make sure I heard you
14 right.

15 THE REPORTER: Hey guys, can we go off the record
16 real quick? I apologize.

17 (Discussion held off the record.)

18 THE REPORTER: (Reading.)

19 "Question: Okay. Have you done economic
20 damages analysis or reports for Radiant prior
21 to this case?

22 "Answer: No, sir.

23 "Question: Did you say 'No, sir'?

24 "Answer: No, sir. No.

25 "Question: Okay. Sorry. I just wanted

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1 to make sure I heard you right."

2 BY MR. MARQUIS:

3 Q. All right. John or Brad, so my next question was going
4 to be, if you had ever had any familiarity or knowledge
5 of Radiant Global Logistics or Radiant Logistics prior
6 to this case?

7 A. No.

8 Q. And then had you ever worked with the attorneys at
9 Hickey Hauck Bishoff and Jeffers before?

10 A. Yes.

11 Q. Do you know about how many times before this case?

12 A. I would say in the past five years, maybe three, four;
13 possibly two to three. Something like that.

14 Q. Okay. Have you -- do you regularly get involved in
15 cases that involve allegations of misappropriation of
16 trade secrets?

17 A. I do.

18 Q. You don't keep track of how many cases per year you work
19 on that involve trade secrets allegations, do you?

20 A. No. No, I don't.

21 Q. What about breach of fiduciary duty?

22 It that a cause of action that is involved in your
23 analyses regularly?

24 A. In the majority of them, yes.

25 Q. And then obviously you have these offices in different

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1 cities.

2 Do you regularly provide expert analysis in
3 Michigan?

4 A. Yes.

5 Q. And do you have a count anywhere of how many cases
6 overall that you're working on in a given year?

7 A. How many cases overall?

8 No. Not necessarily.

9 And, again, that could vary. I would be
10 speculating. I could guess a range. Somewhere between
11 10 and 20, 25 in any given year.

12 Q. And is that taking into account both active litigation
13 and potential litigation, or are you chopping that up in
14 any way?

15 A. That would be anything we'd be working on, anything
16 we've engaged on.

17 Q. And I know I kind of asked this earlier but just to make
18 sure I understand, the cases that are actual litigation,
19 is that more than 50 percent of what you're working on
20 on any given day, any given year?

21 A. Yes. As I said previously, it depends on the year
22 because the investigative work can often be very large
23 matters, more so than the litigation work.

24 50 percent and above, depending on the year.

25 Q. In this case, the report that you put together, was that

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1 your work exclusively, or do other people in your firm
2 chip in on that?

3 A. Oh, certainly I direct other people -- a team's efforts
4 on the work.

5 Q. Are there other forensic accountants that get involved
6 in -- specifically in the report that was done for this
7 case?

8 A. I'm sorry. I'm not sure I understand your question.

9 Q. Okay. Let me kind of rephrase it.

10 Are you the only forensic accountant that has
11 contributed to the report that is part of this case from
12 your office?

13 A. I would characterize my team as entirely forensic
14 accountants.

15 Q. Okay. So, how many forensic accountants worked on this
16 report in the Radiant versus Furstenau case?

17 A. Without the invoices in front of me, I couldn't give you
18 an exact number.

19 I would say anywhere -- approximately four, five
20 different folks.

21 Q. But is it a safe assumption that you, as the one who
22 signed the report, you've kind of reviewed everything
23 and formalized it into an expert report? Is that
24 correct?

25 A. That's correct, yes.

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1 Q. Okay. Ultimately, it's your analysis within the report
2 that you've offered up in this case?

3 A. That is correct, yes.

4 MR. MARQUIS: We've previously provided that report
5 to the court reporter, and I want to go ahead and mark
6 that as Exhibit 1.

7 We probably should also say that there's some, I
8 think, confidential information contained in that
9 exhibit. So, we have a protective order in this case,
10 and we want to take stock of the fact that when we're
11 talking about Exhibit 1, that that is a confidential
12 document or it has confidential information within it.

13 BY MR. MARQUIS:

14 Q. And, Mr. Sargent, do you have that report with you in
15 front of you?

16 I believe you do.

17 A. I do.

18 Q. Just for purses of the deposition, I'm sharing my screen
19 to show this is the report I'm talking about.

20 MR. MARQUIS: Can everyone on the deposition see
21 that report?

22 THE REPORTER: It's John. Yes.

23 A. Yes.

24 BY MR. MARQUIS:

25 Q. Ben said "yes"?

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1 A. Yes, I do.

2 Q. I'm going to stop the share because I think everyone has
3 a copy in front of them. So, when we talk about it,
4 we'll know that is, indeed, your report in this case.

5 Is that correct, Mr. Sargent?

6 A. Yes. It's a cover sheet of it, yes.

7 Q. Right. Right.

8 And it's a 52-page document.

9 Is that what you've got in front of you?

10 A. That sounds about right, yes.

11 Q. Okay.

12 A. I don't think all the pages are numbered to the end,
13 including the various exhibits.

14 Q. Okay.

15 MR. MARQUIS: And, John, obviously I'm asking that
16 this be marked as Defense Exhibit 1; okay?

17 THE REPORTER: Will do.

18 MR. MARQUIS: All right. Thanks.

19 BY MR. MARQUIS:

20 Q. So, Mr. Sargent, I know this is dated December 16th,
21 2019.

22 Do you know when you actually started working on
23 this report?

24 A. Well, I -- I believe I was engaged earlier in 2019 -- I
25 can't recall specifically -- with the idea of that

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1 engagement leading to, you know, analyses that would be
2 part of this report.

3 Q. Okay. And this in the report -- the only report from
4 you I've seen in this case.

5 Are there any other reports?

6 A. No.

7 Q. I want to go through a couple of specific questions that
8 I have about the report.

9 Page 4, down at the bottom, paragraph 7 -- let me
10 know when you're there. Just give me a verbal
11 confirmation.

12 A. I'm on page number 4, and paragraph 7 is at the top of
13 the page?

14 Q. Right.

15 A. Okay. Page 4 on the bottom is where it says page 4.
16 Okay.

17 Q. Yeah. That's what I mean; just how it's marked on the
18 document, not the PDF itself.

19 A. Yes.

20 Q. So, in that paragraph you say:

21 "It is not intended to be a summary of
22 all facts considered in forming my opinions."

23 And I think what you mean is that you've relayed
24 some facts within the report; is that fair?

25 A. Yes. Yes. Some factual "Background," as the heading

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1 says right above it, yes.

2 Q. So, are you saying that there are other facts you'd
3 consider, but just haven't mentioned in this report?

4 A. No, no, no. In this Background section.

5 Q. Okay. Okay.

6 A. I'm being very specific to what follows is the basic
7 background and the parties to the dispute.

8 Q. Okay. So, does that mean that the facts that you have
9 considered in forming your opinions, if they're not in
10 the Background, they're somewhere in the report?

11 A. Yes. Yes.

12 Q. Okay. And the reason I ask is, I didn't know if there
13 were any other facts that you weren't mentioning in the
14 report but that were still relevant to you.

15 A. Well, certainly there are -- there are contextual facts
16 that I may not mention in the report that may have some
17 relevance to the dispute, yes.

18 Q. Any that you can identify as you sit here today, or are
19 you thinking more broadly?

20 A. I'm thinking more broadly, but by way of example, I
21 reference clearly and I measure damages through an
22 injunction and certainly the fact that an injunction was
23 issued, but I don't go into any kind of discussion about
24 the injunction. And I don't cite anything from that
25 opinion.

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1 That's an example, but something that's clearly
2 relevant in my calculations; the timing.

3 Q. Okay. You're referencing the six-month period, or what
4 part of the timing is relevant?

5 A. Yes. Yes. Right. The dates. Right.

6 Q. Okay. I know I asked a minute ago if you had any of the
7 reports.

8 What I didn't ask was, do you have any plans to put
9 together any supplemental report in this case as you sit
10 here today?

11 A. No. Not as I sit here today.

12 Q. Okay. All right. The next page of the report,
13 paragraph 11 is up at the top. I wanted to ask you
14 about that.

15 That first sentence says:

16 "It is my understanding that the central
17 dispute in this matter arose from Furstenau
18 leaving Radiant on August 24 -- and joining
19 BTX on August 26 --"

20 Do you see that?

21 A. I do.

22 Q. And you go on in that paragraph to identify the fact
23 that Furstenau left and then the fact that other
24 employees also left for BTX.

25 Do you see that?

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1 A. Yes.

2 Q. You identified it as a "central dispute."

3 Is that -- what are you basing that off of; that
4 this is the "central dispute"?

5 A. Well, I believe it's the semantics that -- you know,
6 sort of the core issue is Mr. Furstenau and these key
7 employees and the various knowledge skill set they
8 brought, leaving at the time this is -- is what
9 predicated this litigation.

10 Q. Is it the fact that these employees left from Radiant
11 and went to BTX?

12 A. I certainly think that's part of it, yes.

13 Q. Well, that's what you're calling the "central dispute";
14 right?

15 A. My understanding, yes.

16 Q. But you don't mention in there about trade secrets, I
17 note.

18 Any reason why not?

19 A. In that specific paragraph?

20 Q. Right.

21 When you identify the "central dispute."

22 A. No. No specific reason that I did not mention it.

23 Q. Do you consider it part of the central dispute from your
24 understanding?

25 A. Well, as I just stated, I think that the knowledge, and

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1 I think what's been characterized and disputed, the
2 characterization, of customer solutions for Radiant, I
3 think certainly a great deal of that left with those
4 people.

5 Q. And what are you basing that off of?

6 A. That's the allegations, it's my understanding, of the
7 dispute.

8 Q. The next page, which is page 6 down at the bottom, I'm
9 in paragraph 12, that paragraph starts off:

10 "This report presents my analyses, findings
11 and opinions of the potential economic loss
12 suffered by Radiant as a result of the alleged
13 acts by Furstenau and BTX."

14 When you say "as a result of the alleged acts," are
15 you making a connection between the acts and the
16 damages? The alleged acts and the damages?

17 A. Well, certainly I have to consider causation, but as the
18 following sentence clarifies completely -- kind of
19 answers that question -- that my opinions are for
20 economic damages purposes only and based on a subsequent
21 determination of liability by the trier of fact.

22 So, I'm not determining liability in any way, shape
23 or form. I'm -- I'm assuming a subsequent determination
24 of liability and my work was for economic damages.

25 Q. Do you have any opinions on causation?

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1 A. Not that I'm offering. None.

2 Economic damages.

3 Q. Well, because here in that paragraph you say that the
4 economic loss was as a result of the alleged acts by
5 Furstenau and BTX.

6 A. I say the -- and I use some pretty strong disclaimer
7 language, "potential economic loss" on the alleged acts,
8 yes.

9 Q. Okay. So, your clarification today is that you're not
10 saying that it is a causal connection there? You're
11 assuming a causal connection?

12 A. Yes.

13 Q. Okay.

14 A. I'm assuming the determination of liability by the trier
15 of fact.

16 Q. Later on that page, paragraph 14, you say:

17 "During the course of my analysis, I
18 conducted independent research into the facts
19 upon which I subsequently based my assumptions
20 and opinions."

21 What is the "independent research" that you
22 conducted?

23 A. Certainly I spoke to people at Radiant, and I sought
24 financial data both from Radiant and from BTX.

25 Certainly did some market research on both entities

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1 to try to understand them both. Fairly large with big
2 footprints.

3 Things of that nature.

4 Q. Do you remember who you spoke to at Radiant?

5 A. Specifically, I know I was on the phone with Mr. Crain,
6 but I don't believe for any kind of lengthy period of
7 time. And I believe I spoke with Mr. O'Brien. And
8 there may have been one or two others, but it has been a
9 while.

10 Q. Did you speak with Tom Macomber, the CFO?

11 A. I don't recall.

12 Q. Do you remember what kind of information you were able
13 to gather from Mr. Crain or Mr. O'Brien that helped you
14 put together your report?

15 A. Absolutely.

16 The financial data that's scheduled out as exhibits
17 to my report.

18 Q. And do you mean they helped you understand it, or they
19 just provided it?

20 A. I would say much more the latter, and we may have had a
21 question or two about certain transactions or certain
22 items that we noted in the report that they may have
23 given us some background on, but they provided it.

24 Q. Anybody that actually works in the Detroit station that
25 you spoke with to try to understand some of the facts

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1 and background?

2 A. Well, it's my understanding that Mr. O'Brien spent a
3 great deal of time in and around the Detroit station
4 after Mr. Furstenau left, but I don't recall
5 specifically speaking with somebody in Detroit.

6 Mr. O'Brien might have been there when we spoke,
7 but it was all telephonic communication. So, I don't
8 recall.

9 Q. And specifically I was wondering if you had any
10 conversations with Bill Sims, who is, I think, the
11 operations manager at Detroit?

12 A. I do not recall.

13 Q. And you mentioned a moment ago that you did some market
14 research.

15 If you could clarify in your line of work what that
16 constitutes, you know, market research on entities?

17 A. Well, specifically in this case, I mean, I'm just
18 literally looking at how does Detroit fit into BTX
19 overall, how does Detroit fit into Radiant overall. You
20 can derive the majority of that information from their
21 websites. And as Mr. Robinson references in his report,
22 you know, 10-K, public filings, as well.

23 Q. That was going to be my next question; whether you were
24 looking at the 10-Ks, as well. I assume so.

25 And does that, what we covered now, kind of sum up

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1 the independent research you were referencing within
2 your report?

3 A. I believe on a very general basis, yes.

4 Q. Anybody else that you talked to in the market, like
5 competitors of Radiant or BTX, or customers? Any third
6 parties like that?

7 A. No.

8 Q. That same paragraph, 14, which is on page 6, you say at
9 the end of the paragraph:

10 "A complete list of documents relied on
11 as bases for my opinions is included."

12 And that's back in "Exhibit B" of your report.

13 Do you see that?

14 A. I do.

15 Q. And we can look at that later, but my general question
16 on that is, are there other documents, since this
17 report, that you looked at or considered or reviewed
18 beyond the ones that are listed in Exhibit B?

19 A. I have very recently seen some communication, some
20 Radiant internal communications between Mr. O'Brien and
21 a Mr. Sangsland, I believe. And that's very recent,
22 within the last several days, and that certainly
23 wouldn't have been listed in Exhibit B.

24 Other than that, there's nothing that I'm aware of
25 I can recall.

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1 Q. Okay. Obviously since that time, you've reviewed
2 Mr. Robinson's report?

3 A. That's correct. Yes.

4 Q. And then did you review schedules or exhibits referenced
5 in Mr. Robinson's report?

6 A. I think Mr. Robinson just provide one schedule, and it
7 was -- it appeared to be basically a summation of my
8 schedules.

9 Q. Did you review any of the references he made within the
10 report?

11 A. Well, he certainly referenced a lot of narrative, a lot
12 of deposition testimonies. I didn't go back and read
13 those depositions, no.

14 Q. Okay. My understanding from your Exhibit B is that you
15 looked at Mr. Furstenau's deposition from the fall of
16 2018, but there weren't other depositions that you
17 reviewed.

18 Is that correct?

19 A. I -- I may have reviewed Mr. Crain's deposition, as I
20 recall.

21 And, again, this it not an exhaustive list of
22 documents reviewed. It's the documents relied upon that
23 generate my opinions and serve as a basis for my
24 opinions.

25 Q. Right.

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1 And Exhibit B doesn't identify the Crain
2 deposition, but -- so, you reviewed it, but you just
3 didn't use it in putting together your analysis?

4 A. That's correct.

5 Q. The e-mails you just mentioned between Mr. O'Brien and
6 Matthew Sangsland, did those -- the review of those
7 e-mails, they did cause you to have to revisit any
8 conclusions or analysis found in your report that's
9 Exhibit 1 today?

10 A. No.

11 Q. Are they useful in any way with respect to your ultimate
12 conclusions in this case?

13 A. No.

14 Q. The next page, which is page 7 down at the bottom, I'm
15 looking at paragraph 16-A.

16 And here you say:

17 "For the period of September 2016 through
18 August 2018, Radiant averaged monthly revenues
19 and gross margins of \$636,862 and \$159,647,
20 respectively."

21 And then you gave an average monthly gross margin
22 percentage in that paragraph.

23 Do you see that?

24 A. I do.

25 Q. So, what was it that led you to use a method of

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1 averaging the monthly revenues and gross margins here?

2 A. Well, certainly you want to establish -- and the damage
3 model I created was establishing a baseline. And I am
4 sure we will discuss seasonality/cyclicalality, but by
5 observation and the graph that I provided, and I'm sure
6 we'll get to it later on in my report, removing two
7 months of well above that average, over a million
8 dollars, and then two months that were a little less
9 than -- or a little more than half that average, I took
10 out the two outliers to come up with that number. And
11 I -- the numbers over that two-year period were fairly
12 smooth and did not evidence seasonality or cyclicalality.

13 So, establishing on a two-year basis what business
14 at Radiant Detroit as far as income and profit looked
15 like.

16 Q. But I notice you did -- you did it on an average monthly
17 basis versus like an average quarterly basis or just a
18 Q1 versus Q1 basis.

19 What was the thinking behind that?

20 A. Again, as I just stated, I did not see evidence of
21 seasonality/cyclicalality.

22 The numbers were fairly consistent, and I know
23 we'll get there in my report, as presented on a graph in
24 page -- on page 10 of the report, when you take out the
25 two highs and the two lows, it's a -- it's a fairly

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1 stable -- there's exceptions, of course, but not great
2 evidence of seasonality and cyclicalality in that two-year
3 period.

4 Q. In the conversations you had with folks at Radiant, did
5 you discuss seasonality at all?

6 A. I believe so. I don't recall specifically, but I
7 believe that I mentioned something that, "Hey, the
8 numbers seem to indicate that things are fairly flat,"
9 and that was confirmed.

10 Certainly if they had said, "No. We get a lot of
11 seasonality, a lot of cyclically," I would have
12 absolutely considered that.

13 Q. Did you see any mention of that in the e-mails between
14 Mr. O'Brien and Mr. Sangsland that you brought up
15 earlier?

16 A. You know, I believe I saw something talking about Q4
17 versus Q1 numbers, and Q4's tended to be more robust
18 than Q1, but, again, I noted in the data that I had for
19 that two-year period, those two million dollar months, I
20 believe they were a March and April, and they were
21 consecutive. So, this very exceptional earnings period
22 which would sort of dispel a Q1, Q4 analysis.

23 And, again, fairly consistent once you remove those
24 outliers.

25 Q. Those months you mentioned, I think those are Q3

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1 bleeding into Q4 for a fiscal year that Radiant uses.

2 Is that correct?

3 A. I believe so, yeah.

4 Q. So, did -- then after those big months, was there a
5 drop-off in the Q1 that followed?

6 A. Well, you can actually see that on page 10 of my report.

7 Things certainly returned, I would say, more toward
8 normal toward that \$650,000 or so number.

9 Q. And Q1 for Radiant actually starts up in July of '18
10 after those big months; right?

11 A. Correct.

12 Q. And --

13 MR. JEFFERS: Andy, could you just clarify the
14 year, just for the record, that you're talking about?

15 MR. MARQUIS: Sure.

16 This is -- the two months that I believe
17 Mr. Sargent is referring to are March of 2018 and April
18 of 2018.

19 BY MR. MARQUIS:

20 Q. Is that correct, Brad?

21 A. That is -- that is correct.

22 Q. And so what I'm asking is, in July of 2018, shortly
23 after is the start of Q1 for Radiant; correct?

24 A. Correct.

25 Q. And you do see a drop-off there; correct?

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1 A. I do.

2 But I note in other periods, big months in October
3 and December of '17, a big month in November of '16,
4 March of -- I mean, June of '17 was a big month at the
5 end of Q4.

6 Again, I would not interpret this -- that graph to
7 represent seasonality or cyclically at Radiant Detroit
8 over that two-year period.

9 Q. What about on a customer-by-customer basis such as with
10 the trade show customers?

11 A. I don't -- I'm sorry. I know you're asking a question,
12 but I'm not sure what question you're asking there. I
13 apologize.

14 Q. Okay. On a customer-by-customer basis, is there any
15 seasonality from what you saw?

16 A. I don't recall specifically. I think I looked at things
17 overall.

18 Could there be seasonality and cyclically on a
19 customer-by-customer basis? Absolutely.

20 Q. Do you know if anybody has testified to that within the
21 case?

22 A. I don't recall.

23 Q. And specifically with the trade show customers, do you
24 know anything about whether there's seasonality with
25 respect to when those trade shows are hot and heavy and

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1 when they cool off?

2 A. I don't. I don't recall specifically.

3 Q. Do you know if Radiant Detroit has trade show customers
4 that they work with?

5 A. Yes. I'm aware of certain entities. I know
6 Mr. Robinson, in his report, referenced Hillsdale
7 College and people's setting up for various shows with
8 Hillsdale College in his report.

9 Q. Do you know of any of the other customers that are
10 relevant in this case that involve trade show work?

11 A. Not specifically. Not right off the top of my head, no.

12 Q. When you review some of the financial documents that
13 Radiant puts together, including the 10-Ks that we
14 talked about earlier, do they use average gross margin
15 as a -- a figure to rely upon and with any kind of
16 baseline when they're reporting to their investors?

17 A. I don't recall that at all. I don't recall.

18 Q. Do you know if they do period to period comparisons,
19 like a Q4 to a Q4, in order to try to come up with
20 whether this was a good quarter or a bad quarter?

21 A. I don't recall.

22 Q. Did you talk to --

23 A. I --

24 Q. Go ahead. Sorry.

25 A. No, I mean I -- in the 10-Ks to investors, speaking

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1 about Radiant overall, the \$800 million entity, I don't
2 recall specifically but I wouldn't be surprised at all
3 if they gave comparables year to year so investors can
4 see how things are going on a year-to-year basis.

5 Q. So, why does that not factor into your report here?

6 A. I'm sorry. Why does what not factor in?

7 Q. If it's valuable for the investors to compare a Q4 of
8 2017 to a Q4 of 2018, why is that not part of the report
9 in this case?

10 A. I had a two-year baseline of, again, what I saw as
11 fairly static economic performance, and that was more
12 than sufficient to establish a baseline.

13 Q. Is that -- when you're putting together these types of
14 reports for lost profits, is that your typical method to
15 do an average gross margin as sort of a baseline on a
16 month-to-month basis?

17 A. Oh, absolutely. Projecting, you know, profit and doing
18 a but-for analysis, you have to establish a baseline of
19 profitability. It is, as you said, a lost profit, and
20 margin is a measure of profit.

21 Q. In those 10-K reports, was there any discussion of
22 seasonality in there that you found?

23 A. I don't recall that from my review, but I know that
24 Mr. Robinson certainly references discussions of
25 seasonality and comparing period to period.

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1 Q. Is it fair to say that you disagree with Mr. Robinson
2 thinking that that's relevant?

3 A. I would -- I would state this: That it's approximately
4 an \$800 million entity, of which Detroit contributes
5 approximately \$8 million, which means Radiant Detroit
6 was approximately one percent of Radiant overall's
7 performance.

8 An analogy I might use is that's like the CEO of
9 General Motors making a proclamation about ebbs and
10 flows in General Motors, and applying it to a Buick
11 dealership in Woodhaven, Michigan.

12 I just don't think it's a reasonable extrapolation
13 and -- I just don't think it's a reasonable
14 extrapolation at all.

15 Q. What's true generally for the overall entity isn't
16 necessarily true for the individual stations? Is that
17 another way of saying it?

18 A. That's absolutely a way of saying it.

19 And, again, I had the numbers in front of me, and
20 the numbers don't lie. And the numbers, other than two
21 very big months, two smaller-than-normal months, were
22 very consistent over a full two-year period.

23 Q. Let's jump ahead to page 9, paragraph 19.

24 And this is where -- you kind of brought this up a
25 couple of times, so I wanted to ask you about these, you

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1 said, exceptionally high months and then taking out a
2 couple lower months.

3 Do you see that?

4 A. I do.

5 Q. So, yeah, you mention there that:

6 "The revenue per customer data contained
7 two months with exceptionally high (\$1 million
8 plus) revenues --"
9 March and April of 2018.

10 And then you said:

11 "I removed those two outlier data points
12 from my calculation."

13 Do you know why those were exceptionally high?

14 A. I know we had conversation, and I know, candidly, I was
15 told, and I don't recall as I sit here today.

16 Once I removed them from the analysis, I'm sorry,
17 I -- but I know I was told. I know I asked.

18 Q. Do you know if it had anything to do with anything
19 Mr. Furstenau specifically was doing?

20 A. I don't recall specifically, but certainly Mr. Furstenau
21 was the ranking employee at Radiant Detroit for these
22 high months as well as the low months.

23 High and low according to an average.

24 Q. These high months, if I'm understanding right, in March
25 and April of 2018, those are also months where you're

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1 saying that his wages should be disgorged as part of the
2 damages in this case; correct?

3 A. Yes. That's correct.

4 Q. Despite those being exceptionally high revenue months?

5 A. That's correct.

6 Q. How do you square that?

7 A. I simply square that based on the data that I have
8 reviewed, Mr. Furstenau's own deposition, he was -- he
9 sought out Mr. Bacarella and BTX in early '18. They
10 were exchanging information. He was making
11 representations to Mr. Bacarella and BTX in early 2018.
12 About a \$3 million practice or book or whatever term
13 of -- business, annual business, with a team of
14 individuals. And it appears that they were working in
15 concert to prepare for him to come with this team to
16 BTX in the late summer of 2018, beginning in January of
17 2018, as I say.

18 So, I square that by saying that Mr. Furstenau, it
19 appears, was serving two masters at that time, and
20 that's the predicate for my economic analysis in that
21 particular area.

22 Q. So, but for him serving the two masters, as you've
23 identified it, there would have been higher than
24 exceptionally high revenues in March and April of 2018?

25 A. Well, and, candidly, if I had not averaged out these

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1 numbers, as I do state in this report, treated in
2 paragraph 18, my damage calculation would be a larger
3 number; that Mr. Furstenau and those folks were even
4 more valuable to Radiant, and the damages figure would
5 have been a higher monthly revenue and a higher monthly
6 profit margin. But by taking the outliers out of the
7 data, making it a more statistically relevant data, it's
8 lowered my damage calculation.

9 Q. And I understand that from your report. That wasn't
10 what I was asking, though.

11 I was asking, are you kind of assuming that March
12 and April of 2018, despite being exceptionally high, in
13 your own words, would have been more than exceptionally
14 high but for Mr. Furstenau allegedly serving two
15 masters?

16 A. I'm not making that determination at all.

17 Q. Well, and the reason I ask is because part of your
18 damages calculation here is to specifically disgorge
19 earnings of Mr. Furstenau during these months, March and
20 April of 2018; right?

21 A. That is correct.

22 Q. So, if his earnings are disgorged, do we think that him
23 not being there and working, they still would have had
24 these exceptionally high months?

25 A. I have no -- I have no opinion on that.

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1 Q. But your opinion is that Radiant should be entitled to
2 those exceptionally high months but also should not have
3 to pay Mr. Furstenau for those two months?

4 A. I think that is a pretty strong mischaracterization of
5 my opinion.

6 Again, my opinion is economic damages purposes
7 only. What Radiant should be entitled to is up to the
8 trier of fact in this matter, not me.

9 Q. But you've given the opinion that he shouldn't have any
10 wages for that month but Radiant still is entitled to
11 what it's earned in those exceptionally high months? I
12 mean, that's part of your report; right?

13 A. Certainly. Certainly.

14 Q. You don't find any inconsistency in there?

15 A. None.

16 Q. In that paragraph, you obviously describe those two
17 months, March and April of 2018, as exceptionally high.
18 Then you -- the lower ones, you say "the two lowest
19 revenue months." You don't say "exceptionally low."

20 Is there a reason why the difference in language
21 there?

22 A. No, none at all.

23 Q. Were those exceptionally low revenue months?

24 A. Well, I mean, if you -- if you look at an average of
25 approximately \$650,000, again, the numbers do not lie.

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1 If you have a couple of months -- if you have a month
2 where you do almost a \$1.3 million, you're two times
3 your average.

4 The month of a million, you're, you know, almost
5 double, looking at the numbers.

6 Looking at -- looking at the low months of \$380 and
7 \$350, on a percentage basis, they're -- they're not as
8 low as those other two months are high compared to the
9 average.

10 Q. So, is it still -- does it still make sense to subtract
11 out exceptionally high two months and then just sort of
12 low two months on the other end?

13 A. No. I think you're -- you're placing an awful lot of
14 emphasis on my use of the term "exceptionally." I could
15 have certainly used it as "exceptionally low." The
16 exception is that I've taken the two highest and the two
17 lowest out, and that is the -- that is the result of my
18 work.

19 Q. Well, but if you had two months that were two times and
20 then two months -- two times above, and then two months
21 that were \$5 low, you'd throw off the numbers a little
22 bit by just calling them two high and two low months; is
23 that fair?

24 A. Listen, as I said, and I state in the preceding
25 paragraph, I give the actual numbers, as did

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1 Mr. Robinson, without taking those numbers out. In
2 fairness and in a conservative approach, I removed the
3 outliers, which lowered my calculated potential economic
4 damages. It led to a lower number being provided by me
5 in this matter.

6 Q. Well, you mentioned the word "outlier."

7 You only used outliers when you talked about the
8 exceptionally high months. You didn't call the other
9 two months outliers.

10 So, what I'm asking is, if you just removed what
11 you called outliers, you'd actually have an even lower
12 month if you kept in those two months from 2017.

13 Do you see what I mean?

14 A. I sort of see what you mean, but, again, they are -- it
15 seems like you are arguing semantics.

16 They are -- all four of these months are identified
17 as outliers and removed from the data set, and they are
18 removed from the data set because they are outliers.

19 We saw --

20 Q. Are you --

21 A. I observed two very, very high numbers, months, and I
22 could have kept them in the data, and it would have led
23 to a higher damage calculation number on an average
24 basis. But I removed them to be conservative and on the
25 other hand, if I'm going to remove the two high, to be

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1 consistent, I'm going to remove the two low. So, the
2 two low that I took which were not \$5 lower, they were
3 in the hundreds of thousands lower than the average,
4 that makes a consistent data set.

5 Q. You said you identify all four as outliers. I don't see
6 you identifying the two lower ones as outliers.

7 Can you show me where you did that?

8 A. I may not specifically state they're outliers, but
9 that's the entire concept; that I took out the outliers,
10 the two highest points and the two lowest points.

11 Q. You want us to imply that the two lower months are also
12 outliers?

13 A. Correct.

14 MR. JEFFERS: I'm going to object. This has been
15 asked and answered.

16 Andy, I think he -- how many times can he explain
17 this to you?

18 MR. MARQUIS: Just a couple more times.

19 MR. JEFFERS: Well, I object to you doing that.

20 Let's move on.

21 MR. MARQUIS: I'm getting there. I'll be done in a
22 second.

23 A. I'd like to also reference my footnote in Exhibit C-2a.

24 That exhibit very specifically identifies revenue
25 and margin and margin percentage for Radiant Detroit

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1 from September '16 through August of '18.

2 In that schedule, I have a footnote, one, next to
3 four months; April of 2017, July of 2017, March of '18,
4 April of '18. And my note specifically states:

5 "Outlier months. Not included in monthly
6 average."

7 So, in that schedule, I'm very specifically
8 identifying them as outliers.

9 Q. And is that a -- thank you for that.

10 It that a term of art, "outlier"? Does that have a
11 meaning ascribed to it, or is that sort of your own
12 term?

13 A. No. That's a statistical analysis term of art, yes.
14 Definitely.

15 Q. And how do you determine what constitutes an outlier?

16 A. Well, when you're examining a data set, if you observe
17 data that falls on the far -- that happens with less
18 frequency or may have a value that is not within the
19 rest of the data set, that could be determined. It's
20 not consistent with the rest of the data. That could be
21 possibly identified as an outlier.

22 Q. And when you find outliers, do you always have to
23 balance it out so that you get rid of outliers on both
24 ends of the spectrum?

25 A. I found that to be most appropriate in this analysis,

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1 yes.

2 Q. And why?

3 A. Because I was taking out the two highest months, to be
4 consistent in my application to balance that, seeking
5 balance, I took out the two lowest months. And as
6 you've identified, by taking out the -- because the
7 higher months were so much higher, it lowered my number
8 and lowered the damages that I calculated, again, being
9 conservative with the data set.

10 MR. JEFFERS: When you're ready to move on to
11 another topic, Andy, let's just take a short break.
12 We've been going for about an hour. But up to you.

13 MR. MARQUIS: This is a fine time. We can take a
14 break now.

15 (Short recess at 10:30 a.m.)

16 * * *

17 (Record resumed at 10:38 a.m.)

18 MR. MARQUIS: All right. Back on the record.

19 BY MR. MARQUIS:

20 Q. Brad, next item, moving down to paragraph 23 which is on
21 page 10 of your report, the last sentence in that
22 paragraph is what I want to ask about.

23 You write there:

24 "This data indicated that not only did
25 Radiant lose these significant cash flows,

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1 they lost established and highly profitable
2 customers."

3 Do you know which customers you're referring to
4 when do say that "they lost established and highly
5 profitable customers"?

6 A. I believe I go on to cite a list of customers in
7 paragraph 25, two paragraphs later. And I begin that to
8 test and validate if BTX took Radiant's most profitable
9 customers. I reconciled the customers listed in BTX
10 accounting data, the customers listed in Radiant
11 accounting, and I identified 19 customers. So,
12 certainly they would be amongst the 19 listed in
13 paragraph 25 of my report.

14 Q. And those -- I see what you're talking about on the next
15 page.

16 You identify those 19 customers.

17 You're saying those 19 are lost established and
18 highly profitable customers?

19 A. Well, I am not saying all 19 are. I believe that some
20 are certainly more profitable and far more a larger
21 chunk of Radiant Detroit's business than others.

22 But certainly the profitable customers are amongst
23 this list.

24 Q. But are they lost?

25 A. Well, certainly a large chunk of revenue from those

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1 customers was lost, yes.

2 Q. The reason I ask is because in the report it seems to
3 suggest that the customers -- the established and highly
4 profitable customers were lost, rather than the revenue
5 from those customers was lost.

6 Do you see the language?

7 A. Well, I think the vast majority of the business, and
8 particularly after August 27th of 2018, from certain of
9 these customers went to BTX at Radiant's expense.

10 Q. Which ones are you thinking of that that happened?

11 A. I would have to go back and look at a by-customer
12 analysis, but clearly I'm indicating the 19 in paragraph
13 25.

14 Q. But do you know if any of those 19 -- if Radiant simply
15 wasn't able to do any business with them any longer?

16 A. I can't say. I don't know.

17 Q. Have you seen any testimony to that effect?

18 A. I have seen in Mr. Robinson's report, which I'll be able
19 to clarify once we make that an exhibit, quotes from one
20 of the customers or a contact at one of the customers on
21 this list that talks about how, when Mr. Furstenau left,
22 they went with BTX, and that when the injunction was in
23 place, it hurt that customer. Some testimony along
24 those lines.

25 Q. Do you know -- are you referring to Hillsdale College?

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1 A. I believe so. That was Ms. Kaiser, I believe was the
2 lady's name at Hillsdale.

3 Q. Correct.

4 A. Yes. Yes.

5 Q. Because my understanding from her testimony was that she
6 stayed with Radiant after Mr. Furstenau left, but then
7 sometime in early 2019, she left Radiant because of
8 service issues.

9 Are you thinking of somebody else?

10 A. No. But my -- again, I'm sure we'll get to it when we
11 get to Mr. Robinson's report, but my observation was,
12 again, I'm an accountant. So, I rely on numbers, and
13 numbers don't lie.

14 Hillsdale College's revenue as a percent of Radiant
15 Detroit's, I believe was less than one percent of the
16 revenue. They were a -- what I would characterize as a
17 very small customer of -- so, they are not one of the
18 big impact dollar-wise lost customers in paragraph 25.

19 Q. Does that mean you're saying paragraph 25 identifies all
20 these customers, but a certain subset of those are the
21 highly profitable ones?

22 A. Higher revenue, higher profit, yes. Definitely.

23 Q. And are you thinking of specific ones right now, or you
24 can't recall that as you sit here?

25 A. I know that George P. Johnson was clearly a large

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1 customer. I know that the Xpo Nlm line was a large
2 customer. I don't recall with specificity the other
3 ones in this group, but I have that data available and
4 could certainly recall it with specificity.

5 Q. In putting together your analysis, did you ever put it
6 together specific to customers, like these are the
7 customers that lost revenue when Furstenau departed
8 versus these are customers where revenue might have
9 actually increased after Furstenau departed?

10 A. No. Again, I looked at the numbers on a month-by-month
11 basis on a total basis as far as impact to Radiant
12 Detroit and BTX Detroit.

13 Q. And did you see in those e-mails between Mr. O'Brien and
14 Mr. Sangsland that there was some specific accounting
15 for customers that decreased when Furstenau departed
16 versus some that actually increased when Furstenau
17 departed?

18 A. I don't recall that specifically.

19 But obviously the overall impact was that revenues
20 went down very substantially once Furstenau and the
21 other employees left.

22 Q. And do you have any understanding of what it was about
23 their departure that caused the revenues to go down?

24 A. My understanding is that when Mr. Furstenau, as the
25 ranking key employee at Radiant Detroit, left and took

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1 other key execution employees with him, all
2 simultaneously, my words, that that -- that basically
3 gutted Radiant Detroit's operations. And I use the
4 analogy, as often used in professional services -- what
5 I do, what you all do -- a practice in a box; that it
6 appears to me that the practice was boxed up and brought
7 to BTX on the 27th, opened up and off and running.

8 Q. And is there anything specifically that you're relying
9 upon to kind of give it that characterization?

10 A. Certainly there's been testimony to that effect.
11 Certainly looking over as far as context, the example
12 that I gave earlier, the injunction opinion certainly
13 had addressed those issues at length. But that's my
14 overall understanding.

15 Q. Would it be possible for employees -- key employees to
16 leave and there to be an economic impact simply based on
17 departure of key employees without any further alleged
18 wrongdoing?

19 A. Well, that is a hypothetical, but absolutely. That
20 could be what makes them a key employee. Certainly.

21 Q. And if a key employee leaves, particularly one with
22 customer relationships or inherent knowledge and
23 experience, there could be a vacuum left behind; is that
24 fair?

25 A. Again, hypothetical, but yes. Absolutely.

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1 Q. Are you able to say, based on what you know, with any
2 confidence that the losses that Radiant Detroit suffered
3 were based on some wrongdoing rather than simply
4 departure of key employees?

5 A. Again, I think that's one of the primary issues that the
6 trier of fact will have to determine, and those are the
7 facts that are among many, but I think they all sort of
8 revolve around that issue that are in dispute in this
9 case.

10 Q. But from where you sit, you don't necessarily hold any
11 responsibility for trying to tie things together from a
12 causation standpoint?

13 A. No. No, I'm not -- I am not addressing the liability.
14 My analysis is for economic damages purposes only.

15 Q. That paragraph 25 we were talking about before that
16 lists the customers, you don't have in that paragraph
17 the customer Ford National Parts Depot.

18 Did you look at anything related to that customer?

19 A. I certainly recall Ford NPD, I believe I noted it as,
20 but I can't recall anything specific about Ford NPD,
21 per se.

22 Q. Another one that's actually listed here, "Specialized
23 Transportation, Inc.," do you know if that was one where
24 profits actually went down after Mr. Furstenau departed?

25 A. I don't recall specifically.

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1 Give me just one moment. I want to -- I notice in
2 the next paragraph I reference "Exhibit C-6." So, I'm
3 going to take a quick look at that and see if that has
4 the by-customer data.

5 No, it does not.

6 So, no, I don't recall specifically.

7 Q. Well, the e-mails that you talked about reviewing
8 between Mr. O'Brien and Mr. Sangsland, I'll represent
9 to you that they say -- and we can make it an exhibit
10 if people want to look at that specifically, but I'm
11 representing to you that they say between October of
12 2017 and October of 2018, there was actually a
13 \$187,000 increase in revenues from Specialized
14 Transportation, Inc., for that Radiant Detroit station.

15 Did you notice that in those e-mails with
16 Mr. Sangsland and Mr. O'Brien?

17 A. I don't recall --

18 MR. JEFFERS: Hang on.

19 A. -- that specifically.

20 MR. JEFFERS: Hang on.

21 And you're saying year over year?

22 MR. MARQUIS: Right.

23 MR. JEFFERS: Just the snapshot of October to
24 October, year over year?

25 MR. MARQUIS: Right.

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1 A. Again, I don't -- I don't recall that specifically.

2 BY MR. MARQUIS:

3 Q. When Mr. Furstenau departed, do you know factually if
4 the Radiant Detroit station was actively pursuing
5 non-profitable customers?

6 A. I'm not sure I -- I'm sorry. I'm not sure I understand
7 your question.

8 Q. Okay. Do you know from anything that you've reviewed in
9 the case if there were customers that Radiant Detroit
10 was trying to maintain or pursue after Mr. Furstenau
11 left that actually turned out to not be profitable
12 historically?

13 A. Well, this -- you're asking me about facts? I don't
14 know.

15 I do know the fact that once Mr. Furstenau left,
16 the customers that remained before the injunction was
17 put in place, their profit margins went down
18 substantially. That's factual.

19 Q. And you say the ones "that remained."

20 Were there actually customers that departed and
21 were doing no business with Radiant between the time
22 Furstenau left and the time of the injunction?

23 A. I have that data available.

24 I don't -- I don't recall now as I sit here, no. I
25 don't recall.

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1 Q. And the question I asked a minute ago about
2 non-profitable customers, the one I'm thinking about is
3 that Ford NPD, which my understanding from the evidence
4 is that a determination was made by Radiant that it was
5 not a profitable account.

6 Do you recall that?

7 A. No.

8 Q. Is it true generally that going out, spending time and
9 resources on a non-profitable account can distract from
10 the pursuit of profitable accounts?

11 A. Again, you're asking me a very basic sort of Business
12 101 question.

13 You know, profits are desirable in any business
14 environment.

15 My understanding of the facts, once Mr. Furstenau
16 left, was that Mr. O'Brien specifically and Radiant were
17 doing everything they could to triage and mitigate the
18 situation of basically the office being replicated
19 elsewhere and gutted in their Detroit office.

20 Q. Did you find from what you reviewed that those efforts
21 were indeed being made adequately to try and increase
22 profitability as much as possible in the wake of the
23 departure, or is that beyond your scope?

24 A. That was way beyond my scope in this matter.

25 Q. Is it fair, then, to say that you assume in your

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1 analysis that Radiant is mitigating its damages to the
2 full extent?

3 MR. JEFFERS: I'm only going to extent(sic) to your
4 use of the term "full extent." That sounds like kind of
5 a term of art or a loaded term. I think you can ask the
6 same question a little more factually.

7 A. I'm rendering no opinion on Radiant's mitigation
8 efforts. I did not render any opinion in my report on
9 Radiant's mitigation efforts.

10 Based on the data that I have reviewed, it
11 certainly appeared that they were triaging and trying to
12 deal with the situation that was at hand as of August
13 27th, 2018.

14 BY MR. MARQUIS:

15 Q. And more specifically on that triaging, did you see
16 anything about whether there was adequate sales
17 personnel at the station in order to generate revenue?

18 A. Again, I did not focus and I'm not rendering my opinion
19 on, you know, Radiant's mitigation efforts.

20 And who was left at the station, it seemed somewhat
21 clear to me that the key employees were now BTX
22 employees or soon to be BTX employees after August 27.

23 Q. Is it fair, then, based on what you're saying, to assume
24 that you didn't necessarily do any kind of comparison of
25 the experience and quality of the staff that left versus

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1 the experience and quality of the staff that remained or
2 that was hired after the departure?

3 A. No. I did no such analysis.

4 Q. Could it affect revenues, the quality of the staff
5 that's on hand out there trying to generate sales?

6 A. Again, that -- that is a possible -- there are many
7 points to consider, which I'm sure as we get into
8 Mr. Robinson's report we'll discuss in more detail, but
9 the numbers on this particular matter in dispute simply
10 did not lie on a factual basis that when the group left
11 Radiant Detroit and went to Radiant BTX, the -- what
12 arrived at Radiant BTX numerically was almost
13 statistically identical to what left Radiant Detroit.
14 And, again, the analysis of -- the analogy of a box
15 being packed up and being moved over. I have also
16 thought of the analogy of a tree being taken right out
17 of a yard and put into another yard. It's the exact
18 same tree.

19 And so that's -- that's my answer.

20 Q. This might be beyond your scope, but was there something
21 that you saw that Mr. Furstenau had that was Radiant's
22 that was part of that package or that box that you're
23 describing versus his own knowledge and experience?

24 A. Well, I'm certainly aware of a substantial number of
25 e-mails that were forwarded by Mr. Furstenau. I know

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1 that I have not seen any forensic -- computer forensic
2 experts' reports. I know that Mr. Robinson relied on a
3 report generated by the computer forensic expert. I'm
4 not here rendering any opinions on that, but I'm aware
5 that there were approximately just under 300 e-mails
6 forwarded with Radiant domains.

7 Q. Okay. But based on what you're saying, is it fair to
8 assume that you're not relying on anything about those
9 e-mails in order to come to whatever conclusions you
10 have in your report or your testimony today?

11 A. No. Again, that's more in the causation area of things,
12 and those are disputes that the trier of fact will have
13 to determine. Mine is the economic damages.

14 Q. Meaning you're not sure if something in those e-mails
15 was of value in order to impact revenues and
16 profitability; is that correct?

17 A. Well, certainly I've seen the allegations that those
18 e-mail contained a great deal of financial information
19 in attachments and documents.

20 I don't know that, though, for fact. I have not
21 seen. So, I can't opine to that.

22 Q. And my question was more, do you know if whatever those
23 e-mails contained was useful in contributing to
24 profitability or generation of revenues? Do you have
25 any idea about that?

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1 A. Again, I -- I go back to the same answer.

2 I have no opinion on that. I have not seen the
3 data. I've only seen allegations and testimony to it.

4 Q. I'm skipping ahead to page 13, paragraph 29 of your
5 report.

6 And actually, it's kind of 28 and 29.

7 You're covering here, it looks like, the time
8 during the injunction, what happened to BTX's average
9 monthly revenues.

10 Do you see that?

11 A. I do.

12 Q. And there you kind of did an analysis of what the
13 reduction in average monthly revenue was and average
14 monthly gross margin in paragraph 28, and then in
15 paragraph 29 you say that when expenses were applied,
16 here's what BTX, on average, lost per month, \$50,000.

17 Do you see that?

18 A. I do.

19 Q. That calculation of what BTX lost after expenses were
20 applied, that's not a calculation you've done for
21 Radiant in this report, is it? The application of the
22 expenses to then show losses?

23 A. No.

24 Q. And why -- why not? Why is that applicable in that
25 portion of the report with respect to BTX's losses

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1 during the injunction period, but not for Radiant in the
2 other periods?

3 A. Specifically showing that during the injunction period,
4 BTX was -- the injunction certainly had economic impact
5 on BTX, and that is what this -- that's what these
6 paragraphs are about and describing the economic impact
7 on BTX.

8 Q. But is this like a different modeling that you're doing
9 when you apply expenses for BTX's losses, versus when
10 you have calculated lost profits for Radiant?

11 A. It's not a complete different model. It's -- as I begin
12 paragraph 29, I say it's "noteworthy." It's just
13 something I'm noting that if you go to the bottom line,
14 not gross margin, that they're losing \$50,000 on average
15 per month.

16 Q. Okay.

17 A. But we did not do a bottom line analysis here. We did a
18 gross margin analysis.

19 So, I didn't change the model, didn't add a
20 separate model. Just made it's "noteworthy."

21 And then I conclude paragraph 29 by talking about
22 the impact on gross margin; how it went from
23 approximately 25 percent down to approximately
24 15 percent during the injunction period.

25 Q. And on that subject of gross margin percentage, my

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1 understanding from your report is that for Radiant, they
2 had what I think you would probably call a baseline
3 gross margin percentage before Furstenau left, and then
4 they had a lower gross margin percentage before the
5 injunction but after he left, and then their gross
6 margin percentage rebounded to maybe predeparture or
7 close to it.

8 Is that all correct?

9 A. That's accurate, yes.

10 Q. So, is it -- is it your opinion that they were --
11 Radiant Detroit was able to get back to at or close to a
12 baseline margin -- gross margin percentage, but just not
13 a gross revenue figure the same as predeparture?

14 A. Well, I think I state that -- that's one of my
15 subsequent opinions, yes. Yes, that is my opinion.

16 Q. And why, from what you've reviewed, was Radiant Detroit
17 able to get back the percentage of gross margin but not
18 the -- the actual number that could meet the baseline
19 from before?

20 Do you know?

21 A. No. But, again, the numbers don't lie. So, it is
22 indicative that the revenue that returned to Radiant --
23 because certainly revenues came back once the injunction
24 was in place -- was a more profitable revenue. They
25 were making -- they were clearing more on margin for

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1 every dollar of revenue they added.

2 They did not return to their pre-Furstenau

3 departure levels of revenue, but they did return to

4 comparable levels of profitability.

5 Q. Right.

6 And in paragraph 30 there, you say that during the
7 injunction "Radiant was able to reclaim a portion of
8 their lost customers' business, but not all."

9 Do you know why they -- there was not an ability to
10 get back to the baseline when BTX had an injunction on
11 it?

12 A. Well, I specifically cite Mr. O'Brien's testimony that
13 follows that talks about potential loss of goodwill for
14 Radiant, that customers were telling them they were
15 appalled that the entire office would just get out --
16 entire office would walk out the door and what type of
17 company was Radiant. And that's Mr. O'Brien's testimony
18 that I'm citing specifically in my report. And then he
19 goes on to describe his mitigation efforts -- what I'll
20 characterize as his mitigation efforts, trying to get
21 out there and repair -- not being boots on the ground in
22 Detroit, trying to repair the relationships and
23 establish credibility in the marketplace.

24 Q. So, then, are you having to make an assumption that what
25 Mr. O'Brien is describing in that testimony you just

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1 mentioned is the cause of -- the ability to regain
2 margin percentage during the injunction, but not the
3 overall top line revenues?

4 A. I'm sorry. Could you repeat that for me?

5 I missed the first part of it. I apologize.

6 Q. Sure.

7 With citation to that testimony from O'Brien, are
8 you basically assuming that the loss of goodwill that
9 he's identifying there is the cause for still not being
10 able to recover top line revenue when BTX has an
11 injunction against it?

12 A. Oh, I think -- well, goodwill in the form of
13 reputational goodwill is one component, and as
14 Mr. O'Brien goes on in the top of page 14 in my report
15 to state at his deposition they had a vacuum. The
16 practice was gutted. The key people were gone. So,
17 they certainly, I'm sure, had extensive execution
18 challenges with key people being gone.

19 Q. And his testimony that you're citing to is, I think,
20 with respect to George P. Johnson; correct?

21 A. I don't recall that specifically.

22 The question leading up to it, which I try to
23 always include to give context to the testimony, is
24 about the six key employees and what impact did it have
25 on Radiant.

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1 I don't specifically see Mr. O'Brien referencing
2 Johnson, per se.

3 I think he's talking more overall. That's my
4 interpretation.

5 Q. Do you know if that's borne out by the rest of the
6 testimony in this case?

7 A. I'm sorry. What would be borne out?

8 Q. That that's a more general description of loss of
9 goodwill versus specific to one customer?

10 A. I don't know.

11 Q. Do you know if there's any loss of goodwill for Ford,
12 Xpo Nlm?

13 A. I don't know.

14 Q. And more generally with any bid board work, do you know
15 if there's any kind of loss of goodwill that impacted
16 the profitability on bid boards?

17 A. I don't know.

18 Q. Do you know about the bid boards that are relevant to
19 these stations in Detroit?

20 A. I have a -- a pretty solid working knowledge of them,
21 yes.

22 Q. And do you know what it takes in order to win bids on
23 the bid boards?

24 A. Certainly. I have --

25 Q. What would --

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1 A. -- an idea.

2 Q. What would you say it takes to win them?

3 A. Well, I think that -- again, I'm not rendering expert
4 opinion in this area at all. So, I'll disclaim anything
5 I say on that area, but I believe I've seen some
6 testimony -- and people are certainly price sensitive,
7 and anybody is going to say, number one, price
8 sensitivity; responsiveness; speed of execution; and
9 competency of execution are going to be critical. And I
10 think that if people have experience with individuals or
11 entities that are positive, just like in my world and
12 just like in yours, they may tend to use them again and
13 again based on positive experiences.

14 Q. Do you know if there was any kind of impact on the bid
15 board work specifically with respect to the e-mails that
16 were sent or the fact that these employees departed?

17 A. I do not know.

18 Q. Was there anything else that suggested -- besides this
19 testimony about loss of goodwill that suggested to you
20 why the rebound wasn't more significant once the
21 injunction was put into place?

22 A. Well, I think that the -- my statement that they gutted
23 the practice is pretty comprehensive; that they took the
24 entire key practice and boxed it up and delivered it
25 next working day to BTX.

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1 I think that covers all of the things that go with
2 that practice.

3 Q. What about any hires that were made after some of these
4 people departed? Did you see anything about whether
5 there were people that stepped into the shoes that were
6 as capable or maybe even more capable than those that
7 left at generating revenue?

8 A. Well, I certainly didn't make that determination. That
9 was well beyond the scope of my engagement on this
10 particular matter.

11 Obviously, Mr. O'Brien, being Mr. Furstenau's
12 direct supervisor, which I believe he was, I would
13 assume he would bring a great deal of capability, but,
14 again, he wouldn't have the familiarity with that local
15 market, I'm assuming. I'm not stating that as an
16 opinion or as fact.

17 Q. And in that regard, you're not able to state an opinion
18 with respect to whether there were capable, qualified
19 personnel to step into the shoes of those that departed?

20 A. Again, I relied on the numbers. The number were very
21 clear.

22 Q. But is it true generally that the numbers that you
23 interpret can't be looked at in a vacuum? They have to
24 be looked at in the context of the facts?

25 A. Well, the facts are in dispute. I think a great many of

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1 the facts in this case are in dispute. And this case is
2 extremely compelling with the numbers. The numbers tell
3 a very compelling, in my opinion, story.

4 Q. And what do you define as "a very compelling story"?

5 What are you referring to?

6 A. Well, I think the factual evidence that the numbers
7 provide clearly shows a certain amount of revenue, a
8 certain profit margin attached to that revenue, and the
9 impact of the -- the impact of Mr. Furstenau and the
10 others leaving on Radiant, and the impact on the
11 injunction on Radiant and BTX.

12 Q. And what --

13 A. Very cause and effect.

14 Q. But to reiterate, that's based on just the facts that
15 you've reviewed that have been given to you identified
16 in your Exhibit B; right?

17 A. That's -- that's the story the numbers tell.

18 Q. The numbers, plus the facts that have been relayed to
19 you in Exhibit B; right?

20 A. Well, I think the numbers, based on the timing of the
21 two major events that I described, Mr. Furstenau and the
22 others leaving, August 27th, and the injunction going
23 into place February 20th, 2019 and ending six months
24 later. Those -- those provide data around the numbers,
25 and the numbers tell a very factual story around those

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1 dates.

2 Q. In paragraph 31, right after that section of O'Brien's
3 testimony we were just talking about a few minutes ago,
4 you kind of say, I think what you're trying to say here
5 today as well, which is:

6 "O'Brien's testimony, given in real time
7 as Radiant was dealing with the aftermath of
8 Furstenau's defection to BTX, explained why
9 Radiant's average monthly revenue continued to
10 fall even with the injunction in place."

11 So, I think, if I'm understanding right, that's the
12 one thing -- that testimony is the one thing you're
13 citing to as to why the revenues continued to decline
14 even after the injunction went in place; is that fair?

15 A. Sorry. The testimony is the one thing that I'm citing?

16 Q. Right.

17 A. Well, again, it's my overall understanding, again, of
18 the replication of the practice, and that testimony
19 discusses the replication of the practice; the entire
20 Radiant Detroit becoming BTX Detroit, or the key parts.

21 Q. I think I know the answer to this, but there wasn't any
22 analysis of what other competitors were up against
23 Radiant during the injunction that might still have been
24 trying to vie for the business on the bid boards or with
25 these other, you call them, established and profitable

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1 customers?

2 That's not part of your analysis; right?

3 A. Well, certainly I considered competition, but the
4 numbers in this case and the clear movement in that box
5 is not just Chad Furstenau and the other employees, but
6 in that box it's the revenue and the gross margin going
7 right over. And the numbers indicated that.

8 Q. Well, but if that's true across the board, then when BTX
9 goes down to near zero, all of those numbers would have
10 gone to Radiant; right?

11 A. I did not use that analysis because Radiant continued to
12 lose business to, obviously, other competitors.

13 Obviously.

14 Q. And why wouldn't they be able to beat those competitors
15 if BTX was out of the way?

16 A. Oh, I think we've discussed how completely hamstrung
17 their operations were, you know, as of August 27th, and
18 that they were in triage mode is my understanding.

19 Q. And is it your understanding that none of that was
20 self-inflicted?

21 A. I have no opinion on that. None.

22 Q. And your ultimate opinion, I think, if I'm understanding
23 it right, is that all of the BTX earnings from the
24 so-called Radiant customers should be moved over to
25 Radiant as the damages in this case; is that correct?

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1 A. It's a fairly accurate approximation, yes.

2 Q. So, if that's the case, that all those should be moved
3 in one direction as an ultimate conclusion, then why
4 weren't all of those moved during the injunction over to
5 Radiant where they bumped up higher?

6 That's where I'm having a disconnect.

7 A. Well, I used a different measurement for pre-injunction
8 versus post-injunction or during injunction.

9 During the injunction, I used a different
10 measurement. I used a before and after analysis.

11 Q. And is that because Radiant's performance wasn't as good
12 as one might expect when the competitors get sliced out
13 of the market?

14 A. Right. Exactly. And, again, being conservative saying,
15 okay, Radiant went into this injunction period averaging
16 certain revenues and profits, and they exited the
17 injunction period at a certain place, and it was a lower
18 place.

19 And that analysis -- so, the before the injunction
20 and after the injunction.

21 My analysis basically determines and assumes that
22 had Radiant been able to, in a linear fashion, lose the
23 business versus it just dropping completely, there's
24 economic damages.

25 Q. And then at what point -- I mean, I think your report

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1 suggests that the damages stop at the end of the
2 injunction and then leaves open a possibility of
3 additional damages beyond.

4 Is that fair?

5 A. It references there's possible damages, yes, but I did
6 no measurement of and I did not present those as a
7 damage number.

8 Q. The damage number you present has a finite end at the
9 conclusion of the injunction?

10 A. That's correct.

11 Q. And what is the thinking behind ending it there, just
12 generally?

13 I know what your report says with more specificity,
14 but what made you stop your damages calculation at that
15 point?

16 A. That the purpose of the injunction, again, generally
17 speaking to use your terms, was to provide Radiant an
18 opportunity to recover and perform the triage, and that
19 at the end of the six-month period, if that is what the
20 judge determined was the appropriate period, the theory
21 then, being conservative, is that while Radiant
22 certainly could continue to suffer reputationally and
23 continue to suffer potential damages in the area, that
24 that's the point that was determined was reasonable, a
25 six-month period, that's good for me. That a good -- a

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1 great measurement spot for me.

2 Q. But would it not be more conservative to end it at the
3 beginning of the injunction when BTX is no longer in the
4 market?

5 A. No. I think, in fact, analyzing the injunction itself
6 clearly shows that Radiant still suffered, continued to
7 suffer, and was -- and was economically damaged even
8 during the injunction, and that's why I measure that
9 second period.

10 Q. But is there something factually that suggests that
11 whatever damage was occurring when BTX was subtracted
12 from the market, that still was caused by Furstenau and
13 BTX? I mean, how does that -- how do those connect?

14 A. I'm sorry. I'm going to ask you to repeat that
15 question.

16 Q. Sure.

17 A. I apologize.

18 Q. If BTX -- you know, if there's an assumption of improper
19 conduct that occurs and then BTX is told to no longer
20 engage in any of that allegedly improper conduct, and
21 you find in your report that they're not servicing those
22 customers, then how are they the ones that are
23 detracting from any kind of earnings during the
24 injunction period?

25 A. Oh, I think that lends itself completely to -- for one,

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1 the liability is the trier of fact and their
2 determination.

3 But assuming a determination of liability, the
4 numbers don't lie that Radiant is clearly still
5 suffering economic damages and losses during the
6 injunction period.

7 The numbers don't lie. They're still suffering
8 economic losses.

9 Q. Well, and the numbers don't lie that what you're
10 suggesting is that BTX has these losses of at least
11 \$50,000 per month and they should be responsible for
12 damages to Radiant during that injunction period.

13 Why is that not double dipping?

14 A. Again, I'm not -- I'm not making the determination of
15 "and they should be responsible," but if they are found
16 responsible, these are the damages that Radiant has
17 suffered.

18 Q. But Radiant is not the beneficiary of two forms of
19 payback or remuneration if they get BTX to suffer losses
20 during the six-month period and get lost profits from
21 that same competitor?

22 A. Again, my profit analysis is the before and after
23 analysis, where were they before the injunction and
24 where were they after the injunction, and if it's
25 determined that BTX and Mr. Furstenau are liable, then

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1 the damages that Radiant suffered during that period
2 based on the before and after analysis are very clear.

3 Q. But you stand by the idea that taking it all the way
4 through the end of the injunction period is the most
5 conservative way of calculating?

6 A. Yes.

7 Q. I think we'll cover this some when we look at a couple
8 of pieces of Robinson's report, but with the before and
9 after, is it true that your -- when -- BTX's earnings
10 from the alleged Radiant customers, those are being
11 pulled over to Radiant as the lost profits using BTX
12 costs?

13 A. And, again, I think I know what you're going to.

14 Using BTX costs, yes, as a determining gross
15 margin, because the numbers clearly indicated that
16 whoever was driving revenue from these specific
17 customers was seeing approximately a 25 percent gross
18 margin.

19 If there had been a large variance between BTX's
20 gross margin while they were doing business with these
21 customers and Radiant's gross margin while they were
22 doing business with these customers, I think that
23 Mr. Robinson's point would be valid. However, the
24 numbers and the gross margins were statistically almost
25 identical; approximately 25 percent gross margin whether

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1 it was BTX servicing them or Radiant servicing them.

2 Q. What about the shipment count? Did you see anything
3 about the shipment count for Radiant that played into
4 the volume of work that they were getting before the
5 injunction and after the injunction?

6 A. No. I measured volume in top line dollars and margin.

7 Q. So, the analysis wasn't focused on whether or not the
8 energy of bidding on work was squared at profitable work
9 versus non-profitable work? That wasn't part of your
10 analysis necessarily?

11 A. I don't -- I mean, when you talk about the energy of
12 bidding on work, I'm not sure I -- I don't follow your
13 question. I'm sorry.

14 Q. I think I know the answer to this, but I'll just ask it
15 another way.

16 Your analysis did not focus on whether Radiant was
17 still winning the same number of shipments, but simply
18 was bidding on shipments that weren't as profitable as
19 they had been when Mr. Furstenau was there?

20 You didn't analyze that; right?

21 A. Well, certainly profitability in margin and top line
22 revenue.

23 The numbers of measurement, I did not measure, no.

24 Q. I think what I'm hearing today is that you're
25 comfortable as you sit here that your damages model

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1 extends to the end of the injunction period and no
2 further; right?

3 A. Correct.

4 Q. And you're -- obviously with your report, I think it's
5 fair to say you're also reserving your right to amend
6 your opinions to and through trial; is that correct?

7 A. Should facts become available, certainly.

8 Q. But for now, the facts as you know them, that's the end
9 date for the damages model is the conclusion of the
10 injunction?

11 A. I am expecting to testify at court, at trial, to this
12 report --

13 Q. Okay.

14 A. -- unless some new data becomes available.

15 Q. We talked a little bit earlier about the disgorgement of
16 Furstenau's earnings.

17 On that, did you -- did you give any credence to
18 whether or not there were bonuses that were owed to
19 Mr. Furstenau that were not paid?

20 A. I only contemplated the compensation he received.

21 Q. But did bonuses in any way, positive or negative, go
22 into that analysis?

23 A. Yes, as I detail in my report. There was a bonus for, I
24 think, January, February, March of 2018, and I prorated
25 that because I believed -- and I used February 1 as the

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1 measurement date for disgorgement. I prorated that
2 bonus.

3 Q. Do you know if there were any other bonuses that were
4 earmarked for Mr. Furstenau that were able to be used
5 for other things after he departed?

6 A. Again, I was measuring what he received, and that's the
7 data that I got. I didn't ask for or measure what was
8 earmarked.

9 Q. When -- when you got the assignment or the gig to
10 provide a report in this case, did you have a stated
11 objective as far as what you were to do in putting
12 together the report?

13 A. My recollection is that that objective never really
14 varied. And certainly in many, you know, litigation
15 matters that can change depending on facts as they
16 become unearthed or evidence becomes unearthed, and it's
17 right at the onset of my report in writing that, you
18 know, measure damages with the assumption of a
19 determination of liability by the trier of fact.

20 Q. In the model with essentially, as we talked about, the
21 earnings of the BTX group in Detroit transferring to
22 Radiant with respect to those so-called Radiant
23 customers -- that's kind of the model we've been talking
24 about today; right?

25 A. I think you said the BTX Detroit transferring to

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1 Radiant?

2 I think we're talking about the Radiant Detroit
3 transferring to BTX --

4 Q. Well --

5 A. -- pre-injunction.

6 And then post-injunction, to clarify, maybe a
7 little of the -- you know, moving in the other
8 direction.

9 Q. Yeah, what I'm talking about is just -- I think you got
10 a number of \$564,000 of gross revenues that you're
11 moving from what BTX has earned over to Radiant as part
12 of the damages that you think have been suffered?

13 A. I'm sorry. You're getting that number -- is that
14 post-injunction? The revenues?

15 Q. Yeah, I'm -- here I'm looking at pre-injunction period,
16 paragraph 43.

17 A. Okay.

18 Q. You say:

19 "As a result of Furstenau and BTX's
20 alleged actions, Radiant lost, from business
21 with existing customers, \$2.2 in revenue,
22 \$564,863 in gross margin."

23 A. Yes.

24 Q. So, with that concept, is that sort of assuming that all
25 that -- all that revenue would have been Radiant's if

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1 the key personnel would have stayed at Radiant?

2 A. Well, I think the personnel and all the things that come
3 with the personnel in that box that I've described to
4 you.

5 Q. I mean, is there anything beyond that you can cling onto
6 besides just the simple fact that they depart?

7 A. Well, there are many allegations in this case, and
8 the -- and very few of the facts are not disputed, is my
9 observation, other than what I've included in the
10 background about the entities at the beginning of my
11 report.

12 But you used the verb "cling onto," and I would
13 tell you simply that I -- I have, for context, reviewed
14 much, but for my opinion in this report to calculate
15 economic damages, you know, presuming a determination of
16 guilt.

17 Q. But is -- is Radiant's ability to handle those
18 pre-injunction period earnings that we were just talking
19 about from paragraph 43, is that, in your mind,
20 dependent upon those key employees still being there to
21 solicit business and generate revenue for the Radiant
22 station?

23 A. That is certainly a component of it, but, again, that
24 sort of undersells and under-describes what is involved
25 with those key employees; their knowledge, any data that

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1 they may have had, confidentiality, confidential data,
2 proprietary data that is Radiant's. And I know those
3 are all in dispute.

4 Q. Do you know if there's any evidence or allegations
5 against any of the employees beside Mr. Furstenau?

6 A. Hang on. I apologize, but my -- I think these are
7 running out of juice. So, give me a minute.

8 MR. MARQUIS: Well, why don't we go ahead and take
9 a break if you need a minute to get those charged.

10 MR. JEFFERS: Andy, I mean, that's fine with me.
11 Want to just take a normal break, or where are you in
12 your questioning in terms of a --

13 MR. MARQUIS: I've got less than an hour for sure.

14 MR. JEFFERS: Okay.

15 MR. MARQUIS: Maybe only a half hour.

16 THE REPORTER: Guys, did you want to go off the
17 record?

18 MR. JEFFERS: Yes.

19 (Short recess at 11:35 a.m.)

20 * * *

21 (Record resumed at 11:45 a.m.)

22 THE REPORTER: (Reading.)

23 "Question: Do you know if there's any
24 evidence or allegations against any of the
25 employees beside Mr. Furstenau?"

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1 A. I don't believe any other employees are named defendants
2 in this suit, no.

3 BY MR. MARQUIS:

4 Q. And just beyond that, if there's anything that you've
5 reviewed that has shown something improper by or
6 allegedly improper by any employees besides
7 Mr. Furstenau.

8 Do you know?

9 MR. JEFFERS: Objection. Compound.

10 A. I can recall, I mean, just one sort of contextual
11 atmospheric, I would describe it. I recall, I believe
12 it was, Mr. Watkins, who was with the Johnson entity,
13 embedded, and when he originally went over, there was an
14 attempt to -- he became a Johnson employee, not a BTX
15 employee, and then I think there was an attempt to have
16 him be a BTX national employee to try to circumvent the
17 injunction around BTX Detroit.

18 That's a very vague recollection. It may not be
19 factually correct.

20 But other than that, no, I'm not.

21 BY MR. MARQUIS:

22 Q. Okay. Do you know anything about whether the bid board
23 work that Radiant Detroit was doing and that BTX in
24 Detroit was doing lent itself to use of any of that
25 information that was in the e-mails?

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1 Or in that beyond your scope?

2 A. Not part of my scope.

3 Q. Is it true that with what you are doing in your report,
4 you have to assume that there was something used or
5 disclosed with those e-mails that Mr. Furstenau sent to
6 himself?

7 A. Do I have to assume that?

8 No. No.

9 Q. To arrive at your conclusions, you don't have to
10 necessarily assume that?

11 A. No. Again, I think they're just indicative of what
12 could be in that box.

13 Q. I think I know the answer to this, but is there anything
14 specific about the economy during this stretch of time
15 that you looked at, 2016 through 2019, that played a
16 role in your conclusions here?

17 A. I believe I did a little research about any type of
18 factors that might have been impacting logistics and
19 brokerage -- freight brokerage businesses. I don't
20 recall anything specific. I know there are references
21 to strikes that may have occurred.

22 But, again, all of that background information,
23 interesting context to explain anomalous movements of
24 revenues and margins.

25 What I observed over that period, but for the

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1 outlier high and the two lowest, fairly consistent
2 streams of revenues and very consistent profit margins
3 on those revenues.

4 Q. Was there anything that you examined with respect to
5 whether certain customers still had the same volume of
6 business that they were outputting to forwarders during
7 this stretch of time?

8 A. So, did -- I believe I understand your question.

9 My answer would be, no, I did not do any customer
10 specific.

11 Certainly I was aware of and there are in the
12 backgrounds, I think in everybody's pleadings, you know,
13 there's a clear acknowledgment that Radiant Detroit and
14 BTX Detroit serviced the automotive industry, among
15 others.

16 So, clearly any kind of movements within the
17 automotive industry, I might have tried to have been
18 aware of, but the numbers didn't lie. I didn't see --
19 other than, you know, the two big months up and the two
20 months down, I didn't see a whole lot of movement in
21 revenue over a two-year period.

22 Q. Was there anything that you saw that was relevant to you
23 as far as how this -- what I think is a term of art for
24 Radiant -- customer solutions, how that is defined or
25 described?

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1 Did that play a role at all in your analysis?

2 A. Well, I think "customer solutions" is not a term of art
3 but one that's been adopted, it sounds like, by folks,
4 and there's varying definitions of that from what I
5 understand. I think Mr. Robinson brought that up his
6 report.

7 But I would call it -- I think one term that I
8 heard from O'Brien, I believe, was "secret sauce," you
9 know, customers with -- you know, what else is in that
10 box other than those exact people, what all do they
11 bring, what left Radiant and was replicated at BTX.

12 Q. And do you know what any of that is besides the people
13 themselves?

14 A. Well, I think there's obviously allegations of financial
15 information that only Mr. Furstenau would have had
16 access to, customer lists, pricing information, things
17 of that nature.

18 Q. But then what you've done, there's no further -- there's
19 not taking any of that information further to say, yes,
20 indeed that information within that box, pricing,
21 customer list, played a role in the numbers that you put
22 together?

23 I mean, that's not something that you've looked at
24 in detail; right?

25 A. Well, again, the conclusion is the box picked up, moved

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1 right over, you know, from Radiant Detroit to BTX
2 Detroit, and the economic hole that that left at Radiant
3 and the economic -- well, on the other side -- pile, for
4 lack of a better term, not a very artful term, that it
5 created immediately for BTX. The numbers don't lie.
6 It's very clear.

7 Q. Do you know if during the time after Furstenau departed
8 if there was any loss of goodwill for Radiant that had
9 nothing to do with Furstenau?

10 MR. JEFFERS: I think this has been asked and
11 answered, but I could be wrong.

12 A. Well, listen, I hate to cite the opposing expert's
13 report so much in my own deposition, but I think
14 Mr. Robinson alluded to, you know, level -- service
15 level issues, and he cited several entities that, in
16 researching their volume by customer, they were
17 extremely small customers of both Radiant's and BTX's,
18 and they described service issues that -- I don't recall
19 Mr. Furstenau being specifically mentioned in any of
20 those descriptions that are in Mr. Robinson's report,
21 but certainly Mr. Furstenau was in charge at the time
22 for some of those issues.

23 I think I also noted some e-mails that Mr. Robinson
24 might have cited that were after Furstenau and the group
25 left, later -- and I think I saw a November of 2018

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1 reference to something, and I thought that's kind of
2 unusual, but that was, you know, part of the discovery
3 process in this case.

4 BY MR. MARQUIS:

5 Q. Well, I think what you're bringing up is that there's a
6 customer that I don't think fits into the one percent or
7 less, XPO Logistics, Inc., that said communication was
8 terrible in October, November 2018, after Furstenau was
9 gone.

10 Is that what you're referring to?

11 A. Well, as far as the one percent, no. That's Image Tek
12 and Hillsdale College.

13 XPO is certainly a larger customer, as I recall,
14 and, again, seeing that type of communication, the
15 practice has been gutted and it's 60 days later, to me,
16 that -- again, that's not my expert opinion. That's a
17 business opinion. That's not surprising.

18 Q. But you're not here to tell us why the communications
19 were terrible at that time or to say if they have
20 anything causally related to the allegations in this
21 case; right?

22 MR. JEFFERS: Andy, you're the one that keeps
23 asking about them.

24 MR. MARQUIS: I just want to see how much causation
25 he is speaking to and where he draws the line.

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1 A. Well, so I -- you know, your -- you characterized this
2 as communications are "terrible."

3 I'm a believer that feedback from clients is
4 valuable. Whether it's positive or negative feedback,
5 it's valuable if it's candid. That's my own personal
6 belief as a business expert, business professional.

7 I'm -- you know, I did not evaluate other than to
8 simply identify the fact that, as I stated, Radiant was
9 in triage in Detroit once Mr. Furstenau and the other
10 employees left for BTX. When the box was gone, they had
11 a hole.

12 BY MR. MARQUIS:

13 Q. And are you assuming that the triage was because the
14 departure was perceived as sudden, or does that not play
15 a role in whatever you're analyzing?

16 A. Well, the suddenness may or may not have been a factor,
17 but certainly just the fact that the key people were
18 gone.

19 Q. Yeah, my question was geared towards whether some of
20 this inability to rebound, in your mind, was based on
21 lack of foreseeability or predictability of what was
22 going to happen with Mr. Furstenau. I don't know if
23 that played a role at all for you.

24 A. Well, no. No.

25 MR. MARQUIS: Just give me a minute. I'm making

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1 sure that we don't necessarily need to introduce
2 Robinson's report, because I think we've covered most of
3 what's in here that I wanted to talk about.

4 BY MR. MARQUIS:

5 Q. We talked a second ago about the customer solutions or
6 secret sauce.

7 Did you get any kind of background information on
8 when any of that was developed, if there was any kind of
9 period of time when that came to be or was created in
10 order to give it value?

11 A. No.

12 Q. Do you have any background information on, guidance on
13 pricing or outreach to customers that was given to
14 Mr. Furstenau when he was an employee at Radiant?

15 A. Other than a general understanding, no.

16 Q. I don't think we need to do Robinson's report as an
17 exhibit, but one other thing I wanted to ask about in
18 his report -- and if you need to see it, we can put it
19 in front of us as an exhibit.

20 But he says that:

21 "Mr. Sargent has not specified for which
22 Counts in the Complaint that his opinion that
23 Radiant has sustained a loss -- total loss of
24 \$811,415."

25 So, is there -- are there specific counts that

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1 these damages relate to?

2 A. I think I do specify very clearly in my report about the
3 breach of financial duty and the misappropriation of
4 trade secrets. I think Mr. Robinson was very incorrect
5 in that interpretation of my report.

6 Q. Meaning you connect the damages that you've identified
7 to those two counts?

8 A. Again, I'm not necessarily connecting my damage measure
9 to any specific counts, and I'm relying on a
10 determination of liability by the trier of fact and the
11 economic damages that Radiant suffered.

12 Q. So, hypothetically -- and we'll see where this goes, but
13 hypothetically if there was a finding against the
14 Defendants on misappropriation but not on breach of
15 fiduciary duty, would that affect your conclusions in
16 your report about the damages?

17 A. No.

18 Q. And then the flip -- it's probably the same answer, but
19 if there's a finding of liability for breach of
20 fiduciary duty but not misappropriation, the numbers
21 would be the same?

22 A. The same.

23 Q. And then I think Mr. Robinson covers this, and we'll
24 just see if it's the same, too.

25 If there's particular alleged trade secrets that

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1 are deemed to have been misappropriated but not others,

2 the damages figures would still be the same?

3 A. Same.

4 Q. In your report, I want to make sure that I am correct
5 that you're not saying that there was any tail off in
6 profitability before Mr. Furstenau left; is that
7 correct?

8 A. Well, I think we had mentioned -- and I provided the
9 data -- I don't use terms -- I mean, the data doesn't
10 lie. I don't need to describe this but they had two
11 very unusual exceptionally high months in March and
12 April of '18. Mr. Furstenau is gone June, July,
13 August -- 90 days later.

14 I think, based on my graph -- I think it's on
15 page 10.

16 Q. I think you're right.

17 A. Yeah, 10.

18 I mean, I wouldn't call it a tail off. I would say
19 things seemed to come back to a more normal near that
20 \$600 or so. And as you've identified, if there's any
21 possible cyclically on that year end, you know, July is
22 lower than June and August, but August is back up.

23 So --

24 Q. But that's -- so, I mean, I think the short question and
25 answer is, you're not identifying any damages before

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1 Mr. Furstenau actually leaves employment with Radiant;
2 right?

3 A. Other than his compensation while at Radiant, serving
4 two masters.

5 Q. But there was -- in what you've estimated or put
6 together, during that time when you're talking about his
7 wages being disgorged, there's not any damages for the
8 profitability of the station as a whole; right?

9 A. I could see no evidence of economic loss as far as
10 revenues and gross margins, no.

11 Q. And any gains on the side of BTX Detroit during that
12 time period?

13 A. Yeah. Correct.

14 Q. None?

15 A. I don't recall specifically, but they were doing minimal
16 work in that -- in the Detroit market at that point. I
17 believe they were handling most of their automotive
18 business from their Dallas location or --

19 Q. And I --

20 A. -- location.

21 Q. Okay.

22 THE REPORTER: I'm sorry. "-- Dallas location
23 or --"

24 A. Or, I said, a Texas location.

25 THE REPORTER: Thank you.

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1 MR. MARQUIS: Yeah. Sorry, John. I spoke over
2 Brad there.

3 BY MR. MARQUIS:

4 Q. But specific to BTX Detroit, there's not evidence that
5 you reviewed that suggests that business that Radiant
6 could have had while Furstenau was still in the employ
7 of Radiant was being pushed over to BTX Detroit; right?

8 A. Diverting?

9 No. In fact --

10 MR. JEFFERS: I'm going to object as to foundation,
11 Andy, relative to when BTX Detroit even opened, but I
12 don't -- I think your question is a little misleading to
13 the witness in suggesting facts that may not be in
14 evidence.

15 BY MR. MARQUIS:

16 Q. Okay. If you don't understand it, you can let me know.

17 A. Based on a review of the financial information I
18 received from Radiant and from BTX, I saw no gains by
19 BTX at Radiant's expense in revenue or gross profits
20 prior to Mr. Furstenau and the other leaving.

21 Now, certainly the argument on Mr. Furstenau
22 serving two masters would be potentially a Radiant
23 expense, hence the disgorgement calculation, but not in
24 the revenue and gross profit analysis.

25 Q. And you mentioned BTX Dallas a moment ago.

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1 You're aware from some of the facts you reviewed
2 that BTX had that station that was in the automotive
3 industry generally; right?

4 A. Yes. Yes, I am.

5 And it's -- I won't say common knowledge, but in
6 freight forwarding, because so much product moves back
7 and forth from Mexico, certainly freight forwarding
8 businesses in Texas do an awful lot of automotive work.

9 Q. Did any of the BTX customer solutions play a part in any
10 of your analysis in this case?

11 A. No.

12 Q. Are you -- do you have any awareness of what customer
13 solutions BTX might offer that are different from
14 Radiant or even the same as?

15 A. I would assume there's a great deal of similarity in --
16 just their functionality is obviously extremely similar.

17 I would assume that with Mr. Furstenau and the
18 others there now, they're extremely similar in
19 replicating the practice, but I did not -- that was not
20 a part of the calculation or was not considered.

21 Q. And that concept of replicating the practice, that is an
22 assumption by you because you haven't reviewed all the
23 facts; right?

24 A. Well, I know the -- I reviewed many things but I know
25 they're in dispute, so --

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1 Q. All right. I think I know the answer to this one, and
2 this might be my last one, which is, did the respective
3 shipping software that was in place for the entities and
4 the functionality of that software play any role in your
5 analysis here?

6 A. No.

7 MR. MARQUIS: All right. I think that's all the
8 questions I've got for you, Mr. Sargent. I'll turn it
9 to the other attorneys.

10 * * *

11 EXAMINATION

12 BY MR. KOBILJAK:

13 Q. Mr. Sargent?

14 A. Good morning.

15 Q. Good morning.

16 A. Well, afternoon now in Detroit.

17 Q. Yeah, that's true.

18 My name is Kurt Kobiljak. I represent
19 Mr. Furstenau in his Counter Complaint that he filed
20 against Radiant.

21 Are you aware of that Counter Complaint lawsuit?

22 A. I'm aware of it, yes.

23 Q. All right. So, I'm going to -- I potentially want to
24 ask you some similar questions. If I do, I apologize,
25 but these are very short and brief.

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1 But if we take a look at your report and just going
2 through some of this, on page 7, sub F, we've referenced
3 and you've referenced the fact that when you take a look
4 at Furstenau and his compensation, you use a baseline of
5 February of 2018 and you run that through August of '18.

6 What leads you to start your basis from February of
7 '18?

8 A. I believe that is when Mr. Furstenau -- I believe he
9 might have reached out directly to Mr. Bacarella in
10 January of '18, but I believe that Mr. Furstenau
11 testified or there was testimony that representations of
12 a practice level, certain economic metrics, \$3 million a
13 year in revenues, and a team in place -- an operations
14 team in place were in February of '18 time frame.
15 That's why I chose February.

16 August, obviously he left at the end of August.

17 Q. So, it's his testimony that you're using, the February
18 '18 day?

19 A. There may be additional testimony to that, but my
20 recollection is, yeah, that's Mr. Furstenau's testimony
21 at deposition or at -- and/or hearings.

22 Q. All right. And obviously you've made it very clear that
23 your testimony today is regarding more economic damages
24 than being the trier of fact; is that correct?

25 A. That's correct.

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1 Q. All right. Can you tell me just from -- between
2 February through August of '18, how was Radiant
3 economically damaged by Furstenau?

4 A. Well, certainly -- and, again, it's the compensation.
5 If he is serving two masters, this is a very common
6 breach of fiduciary duty type of analysis for somebody
7 receiving payment while serving another master.

8 Q. All right. So, we take a look at your graph on page 10,
9 and, again, just during your testimony previously with
10 Andy, if we look at February of '17 through August of
11 '17 and compare that with 2- -- February '18 through
12 August of '18, from a revenue standpoint it looks like
13 five of those seven months were better in '18 than they
14 were in '17, from a revenue standpoint; is that correct?

15 A. That appears to be correct, yes.

16 Q. All right. And there's no -- you're not testifying
17 today that during that period of time from February to
18 August that Mr. Furstenau was not performing his job as
19 the station manager at the Detroit station, are you?

20 A. No.

21 Q. And it's clear that revenue actually was more solid in
22 '18 than it was in '17 during that period of time?

23 A. That appears to be correct, yes.

24 Q. All right. So, your economic damages is more the fact
25 that because he was -- as you've indicated, he was

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1 servicing two masters, there's somehow -- there's rhyme
2 or reason as to why you disgorged his compensation?

3 A. That's correct, yes.

4 Q. And again getting back to some of your testimony with
5 Andy, just so that I'm aware, when we talk about
6 outliers, obviously you took the two highest and the two
7 lowest.

8 What leads you to take two and two or three and
9 three or one and one?

10 What leads you to take two and two in the case
11 before you today?

12 A. Well, much as we're in the COVID era, the data drives
13 the decisions. And in this specific instance, the facts
14 that there were these two months that were just, as the
15 graph shows, way beyond any other months in this
16 two-year period, that's why we removed them. And then
17 we took two low points out again just to be consistent
18 and to balance the data.

19 Q. And you would might have already answered this,
20 Mr. Sargent, but is there any reason why those two
21 months were so high?

22 A. I did answer that, and unfortunately I can't recall
23 specifically. But I know we had conversations with the
24 folks at Radiant about it, and I just don't recall
25 specifically why these were -- you know, you would go

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1 from \$600,000 in January and February and literally
2 double that in March. We don't -- I don't recall the
3 explanation.

4 Q. But you're not suggesting that somehow Mr. Furstenau was
5 creating two exceptionally high months as a forecast of
6 him departing, are you?

7 A. No. No. In fact, if I were taking that tact, I would
8 have absolutely be including these months in my
9 analysis.

10 Q. All right. If you could just take a look at your sub 41
11 on page 17?

12 And, again, it's getting to Mr. Furstenau's
13 compensation.

14 A. Sure.

15 Q. You indicate at the very bottom, the very last sentence:

16 "He received a bonus of \$18,705 for
17 January, February and March of 2018."

18 That's what it reads; correct?

19 A. Correct.

20 Q. How do you know he received a bonus for \$18,705?

21 A. Well, I'm sure we got that data from Radiant and
22 possibly payroll records.

23 Q. All right. Are you aware at any other time in your
24 review of Mr. Furstenau's compensation that he received
25 any other bonuses other than this \$18,705?

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1 A. Not in this period that I've examined, no.

2 Q. They didn't provide you any other payroll other than
3 payroll for this quarter?

4 A. It's beyond a quarter. It was from, you know, basically
5 January of '18 through August of '18.

6 Q. Correct.

7 But the \$18,705 is for that January, February,
8 March of '18; correct?

9 A. That's what I was told, right. And I prorated that.

10 MR. KOBILJAK: Thank you, Mr. Sargent. That's all
11 I have.

12 MR. JEFFERS: So, I don't have any questions.

13 I did, Andy and Kurt, want to, for now just
14 designate the whole transcript as confidential. I mean,
15 certainly Brad's background and whatnot is not
16 confidential, but just given really the substance
17 concerning his opinions, I just want to start out with
18 that as a default, and then we can work through page and
19 line later on if you guys think there are things that
20 need to be de-designated.

21 Is that fair?

22 MR. MARQUIS: I agree.

23 MR. KOBILJAK: Very good.

24 MR. JEFFERS: Okay.

25 THE REPORTER: Andy, this is John. Just wondering

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1 if -- U.S. Legal would like us to ask if you'd like to
2 order the original of the transcript. Just need a "yes"
3 or "no" at this point.

4 MR. MARQUIS: Yes.

5 THE REPORTER: Thank you.

6 Ben, would you like a copy?

7 MR. JEFFERS: Yes. Yes.

8 THE REPORTER: Thank you.

9 Kurt, would you like a copy?

10 MR. KOBILJAK: No, I'm good. Thank you.

11 (Deposition Exhibit 1 marked

12 for identification.)

13 (Deposition concluded at 12:17 p.m.)

14 * * *

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1 STATE OF MICHIGAN)

2 COUNTY OF OAKLAND)

3 CERTIFICATE OF NOTARY PUBLIC

4 I do hereby certify that the witness, whose
5 attached testimony was taken in the above matter, was
6 first duly sworn to tell the truth; the testimony
7 contained herein was reduced to writing, via remote
8 attendance of the witness, by means of stenography;
9 afterwards transcribed; and is a true and complete
10 transcript of the testimony given.

11 I further certify that I am not connected by blood
12 or marriage with any of the parties; their attorneys or
13 agents; and that I am not interested, directly or
14 indirectly, in the matter of controversy.

15 In witness whereof, I have hereunto set my hand
16 this day at Highland, Michigan, County of Oakland, State
17 of Michigan on Monday, June 15, 2020.

18

19

20

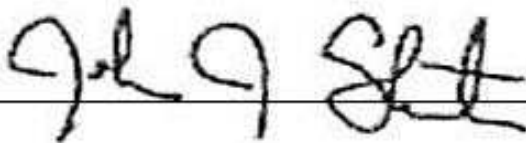
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John J. Slatin, RPR, CSR-5180

Certified Shorthand Reporter

Notary Public, Oakland County, Michigan

My commission expires: July 25, 2023

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